

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 27246 of 2006(R)

CMP.11053/2005 of J.M.F.C.,MAVELIKKARA
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PETITIONER:

SUDHAKARAN, AGED 55 YEARS,
VARIKKOLIL VEETIL, VETTIKKODE MURI,
KATTALAM VILLAGE.

BY ADV. SRI.R.REJI

RESPONDENTS:

1. SURENDRAN, S/O.MADHAVAN,
AGED 53 YEARS, POOVANDIYIL VEETIL,
MANJADITHARA MURIYIL, BHARANIKKAVU P.O.
2. SASIKALA @ AMBILY,
W/O.SURENDRAN, AGED 40 YEARS,
DO. DO.
3. SHAMSU, AGED 57 YEARS,
S/O.THANGAL KUNJU, NEKKANAL MURI,
VITHUMEKKATHIL VEETIL, KRISHNAPURAM VILLAGE.
4. SUB INSPECTOR OF POLICE,
KURATHIYAD.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

R.BASANT, J.

W.P.C.NO.27246 OF 2006

Dated this the 5th day of December, 2006.

JUDGMENT

The petitioner is the defacto complainant and in the complaint filed by him, he had alleged commission of offence punishable under Sections 419 and 468 read with 34 I.P.C. That complaint was filed by him before the learned Magistrate. The learned Magistrate referred the complaint to the police under Section 156(3) Cr.P.C. A crime was registered and investigation was conducted by the police. After completing the investigation, a negative final report was filed by the investigating officer. Notice was received by the petitioner. The petitioner appeared before the learned Magistrate. The case was posted to 25.08.2006. On that date, since the petitioner was not present, the learned Magistrate accepted the final report and recorded the proceedings as closed, as requested by the Investigating Officer.

2. The learned counsel for the petitioner submits that the petitioner did not get effective opportunity to raise his objections before the learned Magistrate. Notwithstanding the fact that he was not present on 25.08.2006, the learned

Magistrate must have objectively considered the final report and come to appropriate conclusions. The learned counsel for the petitioner finally makes only one request. He prays that notwithstanding his absence on 25.08.2006 and the consequent acceptance of the final report by the learned Magistrate, the petitioner may be given an opportunity to appear before the learned Magistrate and raise his objections.

3. I have gone through the relevant inputs. I am persuaded to agree that the petitioner deserves such a further opportunity notwithstanding the laches on his part of not appearing before the learned Magistrate on 25.08.2006. The petitioner shall be entitled to raise all his objections before the learned Magistrate. The learned Magistrate shall consider afresh whether the final report can be accepted in the light of the objections to be raised by the petitioner.

4. In the result:

- i) This Writ Petition is, allowed in part;
- ii) The acceptance of the final report as per order dated 25.08.2006 is set aside;
- iii) The learned Magistrate is directed to give the petitioner an opportunity to raise his objections and consider the

final report afresh in the light of such objections and pass appropriate orders. The petitioner shall appear before the learned Magistrate on 08.01.2007 with a copy of this order.

**R.BASANT
JUDGE**

rtr/